IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 28 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAIRA DIST CO.OP MILK PRODUCERUNION LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 28 of 1990

MR MANISH SHAH with MR JP SHAH for Petitioner No. 1

MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions are referred for our opinion in respect of assessment year 1976-77 :-

1. On the facts and circumstances of the

case, whether the Appellate Tribunal was right in its interpretation and application of section 35C of the Income-tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the entire expenditure of Rs.39,24,979/- was not eligible for weighted deduction under section 35-C ?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and the methods or agricultural, animal husbandry or dairy or paultry farming or advice on such techniques or methods is eligible for weighted deduction u/s. 35 C of the Act ?

4. Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that cost price of milk powder and soya flour received by the union from the UNICEF free of charge is not deductible in computation of total income ?

2. We have heard Mr Manish J Shah, learned counsel for the applicant-assessee and Mr Tanvish Bhatt, learned standing counsel for the revenue.

3. At the hearing today, our attention is invited to the decision of this Court in Kaira Dist. Co-op. Milk Producers' Union Ltd. vs. CIT, (2002) 253 ITR 766 which has concluded the controversy covered by the first three questions and the questions have been answered in favour of the assessee.

Following the aforesaid decision, we answer question Nos. 1 to 3 in the affirmative i.e. in favour of the assessee and against the revenue.

4. Coming to question No. 4, our attention is invited to the decision of this Court in CIT vs. Kaira District Co-op. Milk Producers' Union Ltd., (2001) 247 ITR 314 where also the controversy raised by this

question has been concluded in favour of the assessee.

Following the aforesaid decision, we answer question No. 4 in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-